

Moved BY GEORGE SUFFEL, SECONDED BY MR. MARLATT, THAT THE REPORT OF THE
"Special Committee appointed to wait upon the Attorney General in reference to the expenses of Criminal Justice in
"this County be adopted, and that a petition be sent to Parliament praying for an Explanatory or new Act to
"embrace the whole subject, and that the Clerk be requested to communicate with other Councils on the subject."

CARRIED,

Elgin County Clerk's Office,

St. Thomas, Dec. 1, 1874.

DEAR SIR:—

Above is a copy of Resolution passed by the Elgin County Council respecting the Expenses of the Administration of Justice. I also enclose copy of Report in reference thereto and adopted by this Council, which I will thank you to submit to the Council of your County.

And oblige,

Dear Sir,

Your obed't Serv't,

WILLIAM MCKAY,

County Clerk, Elgin.

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REPORT

OF THE DEPUTATION EMPLOYED BY THE COUNTY COUNCIL OF THE COUNTY OF ELGIN TO CONFER WITH THE PROVINCIAL GOVERNMENT RESPECTING THE AUDITING AND PAYING OF ACCOUNTS CONNECTED WITH THE ADMINISTRATION OF CRIMINAL JUSTICE, PRESENTED AT THE LAST SESSION OF THE COUNCIL, HELD AT ST. THOMAS, NOVEMBER 12th, 1874.

"To the Warden and Council:—The deputation appointed at your last session to wait upon the Hon. the Attorney General on the subject of the complications connected with the expenses and the expenditure by this County connected with the administration of justice, beg leave to report :

"1. That your deputation had an appointment with the Attorney General and the Hon. the Treasurer of the Province at the office of the Attorney General, but owing to the existence of pressing business elsewhere the Treasurer did not attend. Your deputation, however, were met there by Mr. Henry Totten, Auditor of the Treasury, to represent that department. Thomas Hodgins, Esq., M.P.P., kindly attended with the undersigned and took part in the discussion of subjects connected with the objects of their mission, and rendered them valuable advice and assistance.

"2. That your deputation took with them all the memoranda of objections made by the Treasury, represented in the person of the Auditor, and drew the attention of the Attorney General to several items of expenditure by the County connected with the administration of Criminal Justice allowable to claimants payable by the Government, which the Treasury have refused to pay for many years past, but which are plainly provided for by statute as payable by Government.

"3. That your deputation pointed out items of mileage to constables which are the subject of very considerable outlay by counties, and under the plain words of the tariff attached to the C. S. U. C. cap 120, "mileage in going to serve summons or warrant when the service is not effected," &c, which the Government auditors have repeatedly allowed, but which Mr. Totten always disallows, and as your auditors and the Government auditors always properly allow, the Government should, as your deputation insisted, have invariably paid.

"4. That your deputation pointed out by the book in the hands of your Treasurer that for many years past the auditors appointed by the Government have allowed to the County, as against the Government, all the sums ever claimed by your Treasurer from the Treasury of the Province; but the Government have, through their auditor, paid no attention whatever to such audit, or been in the slightest degree governed by it.

"5. Your deputation endeavored to point out the total inutility of the local Government board, and urged its being dissolved as an useless form,—their work having no practical effect on the payment of claims made upon the Government. But the Attorney General, instead of adopting that view, recommended its reconstruction by the appointment of the County Judge, the Warden and the County Treasurer to be *ex-officio* members of it; which recommendation has been since acted on.

"6. The statute before alluded to provides in section 2 that the accounts provided for shall be audited, examined, vouched and approved under regulations to be settled by the Governor in Council. By the existing Order in Council the board before alluded to have "power to audit the accounts which shall have been rendered to the County Treasurer, and every account so rendered, made out and verified, is to be submitted to the board at a given time, and the board may call upon the claimant for any information they may require. After being so audited they are to be transmitted, with the report of the auditors, to the Provincial Treasurer, to be by him reported on for the information of the Governor in Council," &c.—(*vide* circular No. 2, dated 10th August, 1846.) Here are two duties to be performed in two different places. First, that of auditing, to be done by the board in the County; and, secondly, that of reporting the same to the Governor in Council by the Treasurer of the Province. Yet, notwithstanding these plain provisions of the statute named, and of the Order in Council, the Government, by a kind of departmental arrangement at variance with the law and the Order in Council, instead of reporting the audit to the Governor, do the whole auditing (setting aside the auditing by the Board) through a clerk in the Treasury, whose fiat is made absolute, and from which there is no appeal: as is plainly indicated by the authoritative style and dictatorial language exhibited in the remarks sent by him from time to time to your Treasurer.

"7. That your deputation would point out the various inconsistent and contradictory Orders in Council of constructions put upon the plain words of the Act of Parliament alluded to as an evidence of the assumption of authority by a Department on a matter affecting the public expenditure, on which a second opinion cannot be reasonably based. As instances, refer to circular No. 5 of 6 March, 1863, from which it will be found that, under the guise of speaking for the law officers of the Crown, Mr. Dickinson says that "a more liberal interpretation ought to be given to some of the provisions of the Act." From which it is to be implied that the Act had not been liberally or justly interpreted before, or that there was an assumption of liberality which the statute did not justify,—because the statute had not been in any wise changed or amended in the meanwhile. The circular goes on to provide that all reasonable claims after 1st January, 1853, would be allowed out of the funds of the Province, first, for services named under the statute first above named. It might be reasonably concluded that such a provision as this by departmental officers would be unnecessary when the Act of Parliament itself had plainly made it the law of the land already. Yet a little further on there is provision made, or purporting to be made, for "all items relating to criminal justice for which a fee is provided in the judges' tariff." This would at once strike any one acquainted with the subject as clearly illegal. And this is made more clear by the fact that if the law officers of the Crown passed an opinion at all on the subject they must have very soon changed their minds: for on the 6th of August of the same year another circular was put forth under the guise of expressing the opinion of the law officers of the Crown, for it said they had the subject under further consideration and that items relating to criminal justice for which a fee is provided by the judges' tariff are not payable out of the consolidated revenue and would not in future be allowed, but only those under C. S. of U. C. cap. 120, about which there could be no doubt.

"8. Another very large subject of expenditure by the County has for years passed off without notice, for which your deputation insist that the Government should reimburse the County viz., the last item in the schedule to the statute first named, and under the departmental regulations referred to the plain words set forth in the schedule have been set aside. Under it the expenses of publishing the schedules of summary convictions and fee to the Clerk of the Peace for each copy of the schedule, as specially authorized by an Act of the Legislature and before the 9th June, 1846, were payable out of the County funds, ought after that date to have been paid out of the Government funds. But the Treasury have always refused to pay them.

"9. Your deputation feel that the Orders in Council referred to were an improper interference with the plain provisions of an Act of Parliament; that the law officers of the Crown referred to were either very poor lawyers, or they never in fact gave such opinions as are uttered as theirs; or if they uttered them themselves, they must have done so without due consideration or reflection.

"10. The result is, that the whole subject has become so full of complications that the Hon. the Attorney General may very well be excused from passing an opinion on them, and for refusing to disturb what has for years become a system of departmental law, that it would be difficult to deal with in any other way than by an Act of Parliament.— Another result is that this County, in common with other county municipalities, has paid out large sums of money from its own resources for a branch of the public service that it was the duty of the Government of the Province to largely reimburse, but which was not recouped to the County Treasury.

"11. Your deputation therefore recommend that necessary action be taken in the matter by testing the meaning of the schedule to the Act referred to, and the legality of the departmental orders, and particularly the finality of the Government audit of county claims upon the Government.

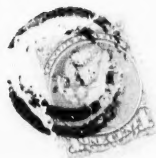
"12. An appeal to the Parliament praying for an explanatory Act, or a new Act to deal with the whole subject, would be the more desirable solution of the whole complication. Your deputation would therefore recommend (in the event of the Council not determining to resort to litigation in order to recover what is justly due to the County for past transactions) that other County Councils be requested to act in concert with this County in praying for such legislation.

"All of which is respectfully submitted.

"JOHN McCAUSLAND, WARDEN.

D. J. HUGHES, COUNTY JUDGE."

The report was adopted, and it was ordered that the Legislature be petitioned to pass an explanatory Act, or a new Act, to deal with the whole subject.



Clerk of County Council

*Sincere
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